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ADMIRALTY.

1. A steamship entering or leaving the port of New York in a fog through which vessels cannot be seen when distant more than a quarter of a mile, should reduce its speed to the lowest point consistent with good steerage way. *The Martello*, 64.
2. It is the duty of a steamship, hearing a blast from a fog-horn on its starboard bow, indicating that a vessel is approaching from a direction which may take it across the steamer's bow, to stop at once until she can assure herself of the bearing, speed, and course of the approaching vessel. *Ib.*
3. It is within the discretion of the court below to refuse to find a fact asked for several months after the disposal of the case on other issues, but if such finding is made it is binding on this court. *Ib.*
4. The requirement in article 12 of the International rules and regulations for preventing collisions at sea, that sailing vessels shall be provided with an efficient fog-horn, to be sounded by a bellows, or other mechanical means, is so far obligatory, as to throw upon the sailing vessel in fault the burden of proof, in case of collision, that the want of a mechanical fog-horn could not have contributed to it. *Ib.*
5. In entering the port of New York, the steamship *Britannia* came so close to Governor's Island as to graze the bottom. This made it necessary for her pilot to direct the engines to be put at full speed till she cleared the ground. After that the speed of the vessel was slowed, and her wheel was put hard-a-port to round into East River. About the time of touching bottom the *Britannia* sighted the steamship *Beaconsfield* on her starboard bow, and blew a single whistle. The *Beaconsfield*, going out from the port, had also seen the *Britannia* when it came around Governor's Island, and about the time it was disengaging itself from the ground, blew a single blast of her whistle, put her helm to port a little, and went on at a slow speed. The whistle of the *Britannia* was heard upon the *Beaconsfield*, but that of the *Beaconsfield* was not heard on the *Britannia*. After clearing the bottom and reducing her speed, the *Britannia* did not respond promptly to her helm, owing to the fact that the condition of the wind and tide was such as to form a flood eddy on the north side of the channel between the Battery and Governor's Island, and an ebb

tide on the south side of the channel. These tides operate to turn the head of a vessel attempting to enter the East River near Castle William to the westward, as it crosses the ebb until it enters the flood eddy. Such tidal action, and its effect upon vessels, were known to the pilot of the *Beaconsfield*, and should have been known to the pilot of the *Britannia*. It retarded the efforts of the *Britannia* to pass astern of the *Beaconsfield*. The *Beaconsfield* thereupon blew another single whistle, and, hearing no answer, put her wheel hard-a-port, stopped her engines and reversed full speed. Her engines were kept in this condition until her headway was stopped. Then she lay still in the water until struck by the *Britannia* and sunk. *Held*, (1) [*All concurring*,] That the *Britannia* was in fault in running at a place where she was liable to meet outward going vessels, across the ebb tide in such a way that the current prevented her from answering her helm with promptness, and that such fault was enough to render her liable, in whole or in part, for the loss occasioned by the collision; (2) [*BROWN and JACKSON, JJ., dissenting*,] That the *Beaconsfield* was also in fault (*a*) in disregarding Rule 23 of the Rules for preventing Collisions on the Water, Rev. Stat. § 4233, directing that when, by Rule 19, one of two vessels shall keep out of the way, the other shall keep her course, subject to the qualifications of Rule 24; and (*b*) in remaining motionless for a minute and a half, in full view of the tardy motions of the *Britannia* in getting astern. *The Britannia*, 130.

6. The statement in Finding 31, that "the conduct of those in charge of the *Beaconsfield* . . . does not warrant the inference that there was, on their part, negligence contributory to produce the collision," is not a finding of fact, within the meaning of the rule, but is a conclusion of law upon the previous facts. *Ib.*
7. The act of August 19, 1890, c. 802, 26 Stat. 320, not having been proclaimed by the President, as required by sec. 3 thereof, it is not yet operative, and this court is not bound by the construction put by English courts on Art. 21, providing that "where, by any of these rules one of two vessels is to keep out of the way, the other shall keep her course and speed." *Ib.*
8. When it is agreed by a charter party, on the part of the vessel, that she shall be tight, staunch, strong, and in every way fitted for the voyage, the owner is bound to see that the vessel is seaworthy and suitable for the service on which she is to be employed, and he is not excused by the fact that a defect is latent and unknown to him; but no obligation in that respect rests upon the owner of the cargo. *The Edwin I. Morrison*, 199.
9. In a suit in admiralty, where the libellant sought to recover for injuries to a cargo caused by the vessel taking in water through a hole in her side, made by the breaking away of the cap from one of the bilge-pump holes, and where the defence was that such breaking was caused by a danger of the sea within the exception in the charter party and bills of

lading, the court below, after finding that such bilge-pumps were not unusual, and describing them and the dangers to be apprehended from them, and after finding that before sailing the cap and plate showed no indications of looseness, in an examination which, after detailing it, was found to be such as a reasonably prudent master might be expected to give, and after finding the condition of the hole at the end of the voyage, found further that "at the time of the contract and lading of cargo and commencement of voyage the vessel was tight, staunch, and strong, and in every way fitted for the contemplated voyage;" that "there was no latent defect in the vessel which contributed to the injury to the cargo;" and that "the whole of said damage to cargo was caused by a danger of the sea, and was within the exception in charter party and bills of lading." *Held*, (1) That these were findings determined by the interpretation which the law put upon the circumstances of the transaction as stated in the previous findings, and, as such, open to revision here; (2) That these deductions were incorrect, and the specific conclusions of law did not follow. *Ib.*

APPEAL.

See CONSTITUTIONAL LAW, 21.

ARREST.

See CRIMINAL LAW, 18.

CASES AFFIRMED OR FOLLOWED.

1. *Seeberger v. Castro*, 153 U. S. 32, followed. *Spalding v. Castro*, 38.
2. *The Stephen Morgan*, 94 U. S. 599, affirmed to the point that a party who does not appeal from the final decree of a Circuit Court cannot be heard in opposition thereto, when the case is properly brought here by the appeal of the adverse party. *Groves v. Sentell*, 465.
3. *Evans v. United States*, 153 U. S. 584, followed. *Evans v. United States*, (No. 2,) 608.
4. *Field v. Clark*, 143 U. S. 649, would seem to be decisive of this case. *Lyons v. Woods*, 649.
5. *New York & New England Railroad Co. v. Bristol*, 151 U. S. 556, affirmed and followed. *New York & New England Railroad Co. v. Woodruff*, 689.
6. *Baltimore & Potomac Railroad Co. v. Hopkins*, 130 U. S. 210, affirmed and followed. *Ib.*

See CONSTITUTIONAL LAW, 11;
JURISDICTION, A, 5, 6;
TAX AND TAXATION, 2;

TIDAL LANDS, 7;
WILL, 2.

CASES DISTINGUISHED.

Hager v. Swayne, 149 U. S. 241, distinguished. *Seeberger v. Castro*, 32.

CASES DOUBTED, QUESTIONED, OR OVERRULED.

Hendricks v. Commonwealth, 75 Virginia, 934, questioned. *Wharton v. Wise*, 155.

See WILL, 2.

CHEROKEE OUTLET.

See CRIMINAL LAW, 1, 2.

CONSTITUTIONAL LAW.

1. The compact of March 28, 1785, between the States of Virginia and Maryland, having been duly ratified by each State, is binding upon both as to the subjects embraced within it, so far as it is not inconsistent with the Constitution of the United States. *Wharton v. Wise*, 155.
2. That compact was not prohibited by Article 6 of the articles of Confederation, forbidding any treaty, confederation or alliance between two or more States without the consent of Congress; and it continued in force after the adoption of the Constitution, except so far as inconsistent with its provisions, and received the assent of Congress by the adoption or approval of proceedings taken under it. *Ib.*
3. The compact of 1785 contained no reference to fish of any kind in Pocomoke River or Pocomoke Sound, and no clause in that compact gave Maryland a right to fish in that river or sound. *Ib.*
4. *Hendricks v. Commonwealth*, 75 Virginia, 934, criticised and questioned. *Ib.*
5. The 10th section of the compact of 1785 does not forbid the State of Virginia from trying and convicting citizens of Maryland for offences committed in Virginia against its laws regulating the oyster fisheries. *Ib.*
6. An ordinance requiring agents soliciting orders on behalf of manufacturers of goods to take out a license and pay a tax therefor, made by a municipal corporation under authority conferred by a statute of the State, granting to such corporations power to levy and collect license taxes on hawkers, pedlers and merchants of all kinds, is an exercise, not of the police power, but of the taxing power; and when it is enforced against an agent, sent by a manufacturer of goods in another State to solicit orders for the products of his manufactory, it imposes a tax upon interstate commerce, in violation of the provisions of the Constitution of the United States. *Brennan v. Titusville*, 289.
7. This court is not bound by the decision of the highest court of the State in which such a tax is authorized and imposed, that its authorization and imposition are an exercise of the police power, and not of the taxing power. *Ib.*
8. When a plaintiff below has the benefit of a full and fair trial in the several courts of his own State, whose jurisdiction he invokes, and where his rights are measured, not by laws made to affect him in-

dividually, but by general provisions of law applicable to all in like condition, even if he can be regarded as deprived of his property by an adverse result, the proceedings that so resulted were in "due process of law," as that phrase is used in the Fifth and the Fourteenth Amendments to the Constitution of the United States. *Marchant v. Pennsylvania Railroad Co.*, 380.

9. The leading cases touching the construction of that phrase in the Amendments reviewed. *Ib.*
10. The act of March 7, 1891, c. 126, of North Dakota, "regulating grain warehouses and weighing and handling of grain," declaring elevators, etc., to be public warehouses, and their owners to be public warehousemen, and requiring them to give bond conditioned for the faithful performance of their duty as such, fixing rates of storage, and requiring them to keep insured for the benefit of the owners all grain stored with them, does not apply to elevators built by a person only for the purpose of storing his own grain, and not to receive and store the grain of others, and being so construed it does not deny the equal protection of the laws to the owner of an elevator made a public warehouse by it, does not deprive him of his property without due process of law, does not amount to a regulation of commerce between the States, and is not in conflict with the Constitution of the United States. *Brass v. Stoeser*, 391.
11. This case differs in no substantial respect from *Munn v. Illinois*, 94 U. S. 113, and *Budd v. New York*, 143 U. S. 517, and an adherence to the rulings in those cases requires the affirmance of the judgment of the court below. *Ib.*
12. When a suit does not really and substantially involve a dispute or controversy as to the effect or construction of the Constitution of the United States, upon the determination of which the result depends, then it is not a suit arising under the Constitution. *New Orleans v. Benjamin*, 411.
13. Upon the bill and answer in this case no such dispute or controversy arose as would give original jurisdiction to the Circuit Court of the United States without regard to the diverse citizenship of the parties. *Ib.*
14. The act of the legislature of Louisiana repealing the act creating the Board of Metropolitan Police and other acts in relation thereto, was, in itself, a mere change of an instrumentality of municipal government, and as, upon the record, it must be assumed that the assets of that board and the remedies in respect thereof of those who held evidences of indebtedness issued by the board remained unaffected by the repealing act, the act could not be attacked in this way as unconstitutional because it made no specific provision for the payment of such indebtedness, on the liquidation of the affairs of the board. *Ib.*
15. If several railroad corporations, each existing under the laws of separate States, consolidate into one corporation, a statute of one of the States, imposing a charge upon the new consolidated company

of a percentage on its entire authorized stock as the fee to the State for the filing of the articles of consolidation in the office of the Secretary of State of the State, without which filing it could not possess the powers, immunities, and privileges which appertain to a corporation in that State, is not a tax on interstate commerce, or the right to carry on the same, or the instruments thereof; and its enforcement involves no attempt on the part of the State to extend its taxing power beyond its territorial limits. *Ashley v. Ryan*, 436.

16. A state statute, requiring insurance companies to make full and specified returns to the proper state officers of their business condition, liabilities, losses, premiums, taxes, dividends, expenses, etc., is an exercise of the police power of the State, and may be enforced against a company organized under a special charter from the legislature of the State which does not in terms require it to make such return, without thereby depriving it of any of its rights under the Constitution of the United States. *Eagle Ins. Co. v. Ohio*, 446.
17. Congress, under the power to regulate commerce among the States, may create a corporation to build a bridge across navigable water between two States, and to take private lands for the purpose, making just compensation. *Luxton v. North River Bridge Co.*, 525.
18. The act of July 11, 1890, c. 669, to incorporate the North River Bridge Company, and to authorize the construction of a bridge across the Hudson River between the States of New York and New Jersey, is constitutional. *Ib.*
19. The New York and Erie Railroad Company was a corporation organized under the laws of, and having its principal place of business in the State of New York. Its object was to construct and operate a railroad between the Hudson River and Lake Erie. In 1841 the legislature of Pennsylvania granted to it the right to construct a few miles of its proposed road in the county of Susquehanna in that State. In 1846, no work having been done on the road, the legislature of Pennsylvania granted to it the further right to construct a portion of its road in Pike County, and further enacted that, after the road should be completed to Lake Erie, the company should pay annually into the treasury of the State of Pennsylvania the sum of ten thousand dollars, and that the stock of the road should be subject to taxation in Pennsylvania to an amount equal to the construction of so much of the road as was in that State. The road was then completed from the Hudson to Lake Erie, passing through portions of Pike County and of Susquehanna County, and the requisite payments have been made, first by the original company, and since by its successors through foreclosures of mortgages. The plaintiff in error is now possessed of the property and of the rights under the acts of 1841 and 1846, and has its principal place of business in the city of New York. In 1885 the legislature of Pennsylvania assessed an annual tax of three mills on the dollar on moneys, loans, stocks, moneyed capital, etc., in the hands of individual citizens of that State, and required the

- treasurer of each private corporation, incorporated under the laws of any other State and doing business in Pennsylvania, when making payments of interest upon its bonds, etc., held by residents of that State, to assess the tax upon it, and to report to the auditor general of the State, and to pay the taxes so assessed and collected into the state treasury. In accordance with this law the treasurer of the railroad company in 1888 reported the nominal value of all its scrip, bonds, and evidences of indebtedness to be \$78,573,485.10, and the nominal value of all such known to be owned by residents of Pennsylvania as "None." Thereupon the State, by its attorney general, commenced an action to recover of the company a tax of three mills on the whole amount returned. In the course of the trial it was found that the amount of bonds of the company held and owned by residents of Pennsylvania aggregated \$841,000, and judgment was given for a tax of three mills on that amount, which was affirmed on appeal by the Supreme Court of the State. *Held*, (1) That the Commonwealth of Pennsylvania cannot, consistently with the Constitution of the United States, impose upon the New York, Lake Erie and Western Railroad Company the duty, when paying in the city of New York the interest due upon scrip, bonds, or certificates of indebtedness held by residents of Pennsylvania, of deducting from the interest so paid the amount assessed upon bond and moneyed capital in the hands of such residents of Pennsylvania. (2) That the fourth section of the act of 1885, in its application to the New York, Lake Erie and Western Railroad Company, impairs the obligation of the contract originally made by the New York and Lake Erie Railroad Company and the State of Pennsylvania, as disclosed by the acts of 1841 and 1846, and by what was done by the companies, upon the faith of those acts. *New York, Lake Erie & Western Railroad v. Pennsylvania*, 628.
20. In the State of New York the committal to prison of a person convicted of crime, without giving him an opportunity, pending an appeal, to furnish bail, is in conformity with the laws of that State when no certificate is furnished by the judge who presided at the trial or by a Justice of the Supreme Court of the State, that in his opinion there is reasonable doubt whether the judgment should stand; and such committal under such circumstances violates no provision of the Constitution of the United States. *McKane v. Durston*, 684.
 21. An appeal to a higher court from a judgment of conviction is not a matter of absolute right, independently of constitutional or statutory provisions allowing it, and a State may accord it to a person convicted of crime upon such terms as it thinks proper. *Ib.*
 22. A city ordinance, made under power conferred by a state statute, imposing a license of five hundred dollars upon a telegraph company which had accepted the provisions of the act of July 24, 1866, c. 230, 14 Stat. 221, upon business done exclusively within the city and not including any business done to or from points without the State, and not including any business done for the government of the United

States, its officers or agents, is an exercise of the police power and is not an interference with interstate commerce. *Postal Telegraph Co. v. Charleston*, 692.

See TAX AND TAXATION, 4, 5, 6.

CONTRACT.

1. A contract for a loan and water works in Havana having been awarded to R., G., L., and M., a deposit was required as a guarantee. N. was employed by R. to raise the money. He borrowed it from B. R. became the assignee of the interests of his co-contractors, and then failed to perform the contract. In order to procure a general release from the liabilities arising from such failure, he gave a power of attorney to Q., who thereupon, in his name and as attorney in fact, entered into an agreement in writing with B. by which it was, among other things, agreed that R. should pay to B. an agreed balance of \$19,087.36 in three months from date, with interest at 9 per cent. That sum not being paid when due, B. sued R. to recover it. *Held*, (1) That the power granted by R. to Q. was outstanding when the agreement was executed; (2) that the agreement made by Q. with B. was authorized by the power; (3) that R., having taken an assignment of the respective interests of his co-contractors, stood in their shoes, and that evidence touching the transaction, admissible against an assigning co-contractor, was admissible against him. *Runkle v. Burnham*, 216.
2. A provision in a contract for the mining, removing, and loading by the party of the first part of ore from a mine of the party of the second part, that the party of the second part may be at liberty to terminate it at any time when he shall be satisfied that the system employed by the party of the first part is prejudicial to the welfare and development of the mine, and that, in that event, there shall be a reference to determine the damages sustained by the party of the first part by reason of the termination, does not give the party of the second part a right arbitrarily to terminate the contract, but only to do so when it is determined that the system employed is prejudicial to the future welfare and development of the mine. *Anvil Mining Co. v. Humble*, 540.
3. A contract made for the extract of ore from the first level of a mine provided that the ore should contain at least 56 per cent of metallic iron. Subsequently the parties extended the contract so as to include the ore contained on and above the second and third levels, with the exception that the ore extracted under this contract should contain at least 58 per cent of metallic ore. *Held*, that this stipulation was applicable only to the ore taken from the second and third levels. *Ib.*
4. Whenever one party to a contract is guilty of such a breach as is here attributed to the defendant the other party may treat the contract as broken, and may abandon it, and recover as damages the profits he would have received through full performance, which measure of

profits was within the intent of both parties when the contract was made, and could be ascertained without difficulty. *Id.*

5. By an agreement under seal the party of the first part agreed that, after the making of the payments and the full performance of the covenants as agreed to by the party of the second part, he would convey to the party of the second part, certain described lands in California, together with a specified number of shares in the stock of an irrigation company, representing a certain pressure of water, to be delivered to the party of the second part in making payment in full for the land. The party of the second part agreed to pay for the land in fixed consecutive payments, and both parties agreed that the instrument should not be construed as a conveyance, equitable or otherwise, and that, until delivery of the formal deed or tender of all payments precedent thereto, the party of the second part should have no title, equitable or otherwise, to the premises. *Held*, (1) That these covenants were independent, and that the payment or tender of payment of the purchase price for the land was a condition precedent to the right to the conveyance; (2) that the party of the second part, on making the contract payments, became entitled to receive the agreed number of shares in the irrigation company, subject to the by-laws of such company, but not stock which represented the title to water or water rights to the extent of such pressure. *Loud v. Pomona Land & Water Co.*, 564.

See PROMISSORY NOTE;
RECEIVER, 1;
USURY, 1, 2.

CORPORATION.

1. A State, in permitting a foreign corporation to become one of the constituent elements of a consolidated corporation, organized under its laws, may impose such conditions as it deems proper, and the acceptance of the franchise implies a submission to the conditions without which the franchise could not have been obtained. *Ashley v. Ryan*, 436.
2. The State only can challenge the right of a foreign corporation to take and hold real estate within its limits. *Seymour v. Slide & Spur Gold Mines*, 523.

See CONSTITUTIONAL LAW, 15, 16;
DIVIDEND.

COSTS.

- A defendant, who wrongfully removes a cause from a state court into the Circuit Court, from whose decree appeals are taken by himself and other parties to this court, must, upon reversal of the decree by this court for want of jurisdiction in the Circuit Court, pay the costs in that court, as well as of all the appeals to this court. *Hanrick v. Hanrick*, 192.

COURT AND JURY.

1. While it is well settled in Federal courts that the presiding judge may sum up the facts to the jury, and express an opinion upon them, he should take care to separate the law from the facts, and leave the latter in unequivocal terms to the judgment of the jury. *Starr v. United States*, 614.
2. The circumstances of this case apparently aroused the indignation of the judge who presided at the trial of it in an uncommon degree, and that indignation was expressed in terms which were not consistent with due regard to the right and duty of the jury to exercise an independent judgment in the premises, or with the circumspection and caution which should characterize judicial utterances; and this court is constrained to express its disapprobation of this mode of instructing and advising a jury. *Ib.*

See EJECTMENT, 2.

CRIMINAL LAW.

1. On November 12, 1890, in the Indian country, within the boundaries of Oklahoma Territory, as defined by the act of May 2, 1890, c. 182, 26 Stat. 81, horse stealing was not a crime against the United States, punishable under the act of February 15, 1888, c. 10, 25 Stat. 33; but as to the Cherokee Outlet, it remained Indian country after the passage of the act of May 2, 1870, and such an offence, committed there, continued to be an offence against the United States. *United States v. Pridgeon*, 48.
2. An indictment in the District Court of the United States within and for Logan County in Oklahoma Territory, and for the Indian country attached thereto, charging the commission of the offence of horse stealing in November, 1890, and laying the venue of the offence "at and within that part of the Territory of Oklahoma attached for judicial purposes to Logan County," with a description of territory which included part of Oklahoma and part of the Cherokee Outlet not in Oklahoma, and which averred the same to be "then and there Indian country, and a place then and there under the sole and exclusive jurisdiction of the United States of America," will not be held to be fatally defective when attacked collaterally by writ of *habeas corpus*. *Ib.*
3. Where a court has jurisdiction of the person and the offence, the imposition of a sentence in excess of what the law permits, does not render the legal or authorized portion of the sentence void, but only leaves such part of it as may be in excess open to question and attack. *Ib.*
4. In accordance with this principle the court answers the third question certified in the negative, without expressing an opinion as to what would have been the proper action of the Circuit Court in dealing with the prisoner's application. *Ib.*
5. A person who has an angry altercation with another person, such as to

lead him to believe that he may require the means of self-defence in case of another encounter, may be justified, in the eye of the law, in arming himself for self-defence; and if on meeting his adversary, on a subsequent occasion, he kills him, but not in necessary self-defence, his crime may be that of manslaughter or murder, as the circumstances, on the occasion of the killing, make it the one or the other. *Gourko v. United States*, 183.

6. If, looking alone at those circumstances, his crime be that of manslaughter, it is not converted into murder by reason of his having previously armed himself. *Ib.*
7. B. having been indicted under Rev. Stat. § 5511 for voting more than once at the same election for a Representative in Congress, a special deputy of the marshal swore at the trial that he saw B. vote twice at the poll. On cross-examination he was asked why he did not arrest B. when he saw that he had thus voted. The question, being objected to, was excluded. *Held*, that it was irrelevant and was properly excluded. *Blitz v. United States*, 308.
8. The refusal by a Federal court to grant a new trial cannot be reviewed on a writ of error. *Ib.*
9. An indictment under Rev. Stat. § 5511 for knowingly personating and voting under the name of another at an election at which a Representative in Congress and also state officers were to be elected, is fatally defective if it fails to clearly charge that the accused so voted for a Representative in Congress. *Ib.*
10. A count in an indictment under that section which charges that the defendant did then and there unlawfully, knowingly, and feloniously vote at said election for a candidate for the same office for Representative in the Congress of the United States, more than once, describes the offence with sufficient certainty, and the election at which it took place sufficiently by such reference to the date of it named in a previous count in the indictment. *Ib.*
11. The indictment in this case contained three counts, specifying three separate offences against Rev. Stat. § 5511. The defendant was convicted of all. A motion in arrest of judgment under the second count being entertained, he was sentenced, under the first conviction, to imprisonment for a term commencing on a day named, and under the third conviction to a further term, commencing on the expiration of the first term. *Ib.*
12. This court, holding the first count in the indictment to be fatally defective, and sustaining the arrest of judgment under the second count, directs that the term of imprisonment under the third count shall be held to commence on the day named for the commencement of the first term. *Ib.*
13. An indictment should charge the crime, alleged to have been committed, with precision and certainty, and every ingredient of which it is composed must be accurately and clearly alleged; but it is not necessary in framing it to set up an impracticable standard of partic-

ularity, whereby the government may be entrapped into making allegations which it would be impossible to prove. *Evans v. United States*, 584.

14. Applying this rule, the eighth count in the indictment, charging the prisoner with unlawfully procuring the surrender and delivery to himself of the funds of a national bank of which he was a director, and the fourteenth count, charging him with knowingly and fraudulently aiding in procuring the discount of unsecured paper by the bank, are examined in detail, and are held to be sufficient to sustain the conviction. *Ib.*
15. A verdict of guilty, entered upon all the counts of an indictment, should stand if any one of them is good. *Ib.*
16. A warrant issued by a commissioner of a court of the United States is not void for the want of a seal, the commissioner having no seal, and not being required by statute to affix one to warrants issued by him. *Starr v. United States*, 614.
17. The same result is reached under the laws of Arkansas, which prescribed the form of warrant as attested under hand, but not under seal. *Ib.*
18. The settled rule that where a person having authority to arrest, and using the proper means for that purpose is resisted, he can repel force with force, and, if the party making the resistance is unavoidably killed, the homicide is justifiable, may be invoked by a person who resists and kills the officer if he was ignorant of the fact that he was an officer; and, when such a defence is set up to an indictment for murder, it is error to charge the jury that, if the threatening or violent conduct of the prisoner prevented the officer from giving notice of his official character, he would not be required to give notice. *Ib.*
19. The possession of a conscience void of offence towards God and man is not an indispensable prerequisite to justification of action in the face of imminent and deadly peril, nor does the intrinsic rightfulness of the occupation or situation of a party, having in itself no bearing upon or connection with an assault, impose a limitation upon the right to repel it. *Ib.*
20. The motive of a person, accused of murdering an officer trying to arrest him, in being where he was at the time of the killing, has nothing to do with the question of his right of self-defence in itself, and his previous unlawful conduct should form no element in the solution of that question, except as it throws light on his belief that his arrest was sought by the officer. *Ib.*

See CONSTITUTIONAL LAW, 20, 21;
CRIMINAL PROCESS.

CRIMINAL PROCESS.

A warrant of a commissioner of a Circuit Court of the United States, commanding the arrest of a person of a certain name, not otherwise desig-

nating or describing him, upon a charge of murder, will not justify the arrest of a person who has never been known or called by that name, notwithstanding the commissioner testifies that he was the person intended. *West v. Cabell*, 78.

CUSTOMS DUTIES.

1. The purchaser of an imported article in bond, pending an appeal from the assessment of duties upon it which is subsequently overruled, can, on paying the duties as assessed, maintain an action in his own name against the collector to recover an excess in the payment exacted. *Seeberger v. Castro*, 32.
2. Tobacco scrap, consisting of "clippings from the ends of cigars and pieces broken from the tobacco, of which cigars are manufactured in the process of such manufacture," "not being fit for any use in the condition in which the same are imported, and their only use being to be manufactured into cigarettes and smoking tobacco," was, under the tariff act of March 3, 1883, c. 121, subject to a duty of 30 per cent *ad valorem* as unmanufactured tobacco, and not to a duty of 40 cents per pound as manufactured tobacco. *Ib.*
3. The action of a collector of customs under § 2 of the act of June 10, 1890, c. 407, 26 Stat. 131, in estimating the value of paper florins of Austria-Hungary, in which the value of imported merchandise is expressed in the invoices, and converting them into the currency of the United States, is not the subject of appeal to and reversal by the board of general appraisers. *United States v. Klingenberg*, 93.
4. A Circuit Court of the United States has jurisdiction to review the action of a board of general appraisers in entertaining such an appeal, and in reversing the action of a collector in that respect. *Ib.*
5. Saccharine, imported into the United States in 1887, was not entitled to free entry as an acid. *Lutz v. Magone*, 105.
6. Whether Boonekamp bitters, imported in September, 1889, were so similar to absinthe as to be susceptible of being assessed under the clause applicable to it, was a question of fact properly left to the jury. *Erhardt v. Steinhardt*, 177.
7. The jury having determined that fact adversely to the government, it follows that such bitters were at that time to be classified under the proprietary preparation clause of Schedule A of the act of March 3, 1883, c. 121, 22 Stat. 488, 494. *Ib.*
8. The rate of duty on the bottles was dependent upon the rate of duty on the contents. *Ib.*
9. The words "date of original importation," as used in Rev. Stat. § 2970, refer to the exterior port of first arrival of the merchandise, and not to the interior port of destination. *Seeberger v. Schweyer*, 609.

DAMAGES.

1. The fact that a railroad company is held liable for damages suffered by a person by reason of the occupation of a public street in a city in

front of his premises by an elevated track furnishes no ground for holding it liable to an owner on the other side of the same street but in a different part of it, by reason of the construction of a similar elevated track opposite to him but not on the public street. *Marchant v. Pennsylvania Railroad Co.*, 380.

2. The construction of an elevated railroad, under laws of the State, on private land abutting on a public street in a city, gives to the owner of land on the opposite side of the street no claim to recover consequential damages for injury inflicted upon him thereby. *Ib.*
3. When a person from whom an internal revenue tax has been illegally exacted accepts from the government, without objection, the payment of the sum thus illegally exacted, he thereby gives up his right to sue for interest as incidental damages. *Stewart v. Barnes*, 456.

DISTRICT ATTORNEY.

See FEES.

DIVIDEND.

Dividends can rightfully be paid only out of profits; profits are measured by the amount of net earnings; and net earnings are what remain after maintaining the property and paying the interest upon its debts. *Mobile & Ohio Railroad Company v. Tennessee*, 486.

EJECTMENT.

1. One who holds possession of real estate as manager for or under another cannot, when sued in ejectment by his principal, dispute the principal's title. *Seymour v. Slide & Spur Gold Mines*, 523.
2. When such agent admits the relation and the title of his principal, there is no impropriety in the court's directing a verdict for the plaintiff. *Ib.*

EQUITY.

See STATUTE, A, 1, 2;

TAX AND TAXATION, 1, 3.

EVIDENCE.

1. A defendant who proceeds to introduce testimony, after denial of his motion for a verdict in his favor on the close of the plaintiff's evidence in chief, thereby waives his exception to that denial. *Wilson v. Haley Live Stock Co.*, 39.
2. Where a cause of action is not proven, not merely in some particular, but in its entire scope and meaning, the courts treat it, not as a case of variance merely, but as an entire failure of proof. *Ib.*
3. A report of the names of Indians and half-breeds entitled to participate in an allotment of land, made under the act of July 31, 1854, 10 Stat. 315, to the Indian bureau under instructions to report in full a

list of all applicants, showing names, age, sex, etc., is not admissible in evidence in an action between two parties, each of whom claims under the same person and the same allotment, in order to show the age of that person at the time of the allotment. *Hegler v. Faulkner*, 109.

4. The rejection of evidence immaterial to the result did not constitute reversible error. *Runkle v. Burnham*, 216.
5. A witness may be asked as to the relations of the parties at the time of the execution of a written power of attorney, although his answers may have a bearing upon their obligations arising under a written contract made under the power. *Ib.*
6. Findings of fact made by the court below are binding here when there is any evidence to support them. *Ib.*
7. A defendant who, after denial of his motion for a nonsuit made at the close of plaintiff's evidence in chief, offers evidence in his own behalf, thereby waives his motion and an exception to the denial of it. *Ib.*
8. A letter of a party to the suit bearing upon the issues introduced in evidence against him, may be explained by him as a witness in his own behalf, and its effect upon the issues and the force of the explanation are proper subjects for the consideration of the jury. *Anvil Mining Co. v. Humble*, 540.
9. By the terms of the contract in this case the amount due the plaintiffs from time to time was to be determined by the weigh-bills, which were in the possession of the defendant's bookkeeper. The plaintiff applied to the bookkeeper for information on this point, and received a reply. *Held*, that that was competent evidence on that point. *Ib.*

See PROMISSORY NOTE.

EXCEPTION.

See EVIDENCE, 6.

FEES.

1. A district attorney, whose place of abode is at a distance from the place at which court is held, is not entitled to mileage for travel in going to his home every Saturday, and in returning to the place of holding court the following Monday morning, during the continuous session of the court. *United States v. Shields*, 88.
2. Fees allowed to public officers depend upon the provisions of the statute granting them, and are not open to equitable construction by the courts or discretionary action on the part of officials. *Ib.*

FINDING OF FACT.

See EVIDENCE, 6.

HABEAS CORPUS.

Under a writ of *habeas corpus* the inquiry is not addressed to errors, but to the question whether the proceedings and judgment are nullities; and unless it appears that the judgment or sentence under which the prisoner is confined is void, he is not entitled to his discharge. *United States v. Pridgeon*, 48.

See CRIMINAL LAW, 2.

INDICTMENT.

See CRIMINAL LAW, 2, 7, 9 to 15.

INTEREST.

See DAMAGES, 3.

JURISDICTION.

A. JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES.

1. On a writ of mandamus in behalf of a State to the Commissioner of Patents to register, under the act of March 3, 1881, c. 138, a trademark used by the State on intoxicating liquors in commerce with a foreign nation, and which the Commissioner of Patents has refused to register, on the ground that the State by its own laws had no authorized trade in liquors outside of its limits, the validity of an authority exercised under the United States is not drawn in question; and therefore, in the absence of evidence of the value of the registration, a judgment of the Court of Appeals of the District of Columbia, denying the writ of mandamus, cannot be reviewed by this court on writ of error, under the act of February 9, 1893, c. 74, § 8. *South Carolina v. Seymour*, 353.
2. This court has no jurisdiction over an appeal from the judgment of a Circuit Court denying the application of counsel for a solicitor's allowance out of a fund realized from a sale made under direction of that court in execution of a mandate of this court, the appeal being taken after July 1, 1891, and not being taken under the provisions of section 5 of the Judiciary Act of March 3, 1891, c. 517. *Mason v. Pewabic Mining Co.*, 361.
3. This court has jurisdiction to revise the judgment of the Supreme Court of Tennessee in this case, deciding that the provision in the eleventh section of the Tennessee charter of the Mobile and Ohio Railroad Company that no tax shall ever be laid on said road or its fixtures which shall reduce the dividends below eight per cent does not forbid the assessment and collection of taxes under the acts of the legislature of Tennessee referred to in the opinion of that court; that "the said eight per cent clause is invalid," "null and void," and that the said legislation "does not violate or impair the obligation of any contract with the Mobile and Ohio Company." *Mobile & Ohio Railroad Co. v. Tennessee*, 486.

4. When the record in a case brought by writ of error from a state court shows nothing of what took place in the state court of original jurisdiction, and in the appellate state court no objection raising a Federal question during the trial and before judgment, but such question is raised for the first time in the appellate court on a motion for a rehearing, the writ of error must be dismissed upon the ground that the Federal question is not properly presented by the record. *Miller v. Texas*, 535.
5. *Insurance Company v. The Treasurer*, 11 Wall. 204, affirmed and followed to the point that in order to give this court jurisdiction by writ of error to a state court, it must appear by the record that a Federal question was raised. *N. Y. & N. E. Railroad v. Woodruff*, 689.
Delaware Navigation Company v. Reybold, 142 U. S. 636; *Hammond v. Johnston*, 142 U. S. 73; and *New Orleans v. New Orleans Water Works Co.*, 142 U. S. 79, followed to the point that even if a Federal question was raised in a state court, yet, if the case was decided on grounds broad enough in themselves to sustain the judgment, without reference to the Federal question, this court will not entertain jurisdiction. *Ib.*

See CASES AFFIRMED, 2;
 CONSTITUTIONAL LAW, 7.

B. JURISDICTION OF CIRCUIT COURTS OF THE UNITED STATES.

Whether this suit be regarded as seeking a decree against defendants as on a creditors' bill, or as by analogy to garnishee process, it was, under the pleadings, a suit to recover the contents of choses in action within the meaning of the Judiciary Act of 1887 and 1888, and, as the bill contained no averment that the suit could have been maintained by the assignors, the jurisdiction of the Circuit Court cannot be sustained on the ground of diverse citizenship. *New Orleans v. Benjamin*, 411.

See CUSTOMS DUTIES, 4.

LIMITATION, STATUTES OF.

The right of action upon a judgment or decree of a court of record of the United States, sitting within the State of Wisconsin, is limited by the Revised Statutes of that State of 1858, to twenty years after the cause of action accrued. *Metcalf v. Watertown*, 671.

See USURY, 3.

LOCAL LAW.

1. In view of the Nebraska statutes concerning the operation of statutes of limitation, there was no error in the instruction of the court below in that respect. *Hegler v. Faulkner*, 109.
2. A note by which three parties, signing it, promise to pay to the order of the payee at a bank in New Orleans the sum named therein with

interest, not negotiable, is a joint obligation under the law of Louisiana, and binds the several parties thereto only for their proportion of the debt; since, to make it a solidary obligation, binding each of the promisors for the whole debt, the solidarity must, under the law of that State, be expressly stipulated, and is never presumed. *Groves v. Sentell*, 465.

3. The promisors on that note, in order to secure it, mortgaged real estate in Louisiana, which they then held in common, undivided. They thereby severally declared that they were indebted to the mortgagee, etc., and that they did thereby mortgage to the mortgagee the property described in the deed. There was no stipulation showing an intention to mortgage separately an undivided part of the property for an undivided part of the debt. *Held*, that it was the intention of the parties that the security for the purchase money should rest upon the entire entity. *Ib.*
4. A mortgagor has the power, under the laws of Louisiana, to exclude indivisibility in contracting the mortgage, and, if he fails to do so, indivisibility applies, not alone as a result of his silence, but also because, being the general rule and of the nature of the contract, it exists unless excluded by its express terms or by a plain implication deducible from it. *Ib.*
5. The divisibility of a debt secured by a mortgage does not necessarily import the divisibility of the mortgage securing it. *Ib.*
6. The voluntary partition by the mortgagees of the property covered by the mortgage did not operate to prevent the mortgage creditor from enforcing his security against either part. *Ib.*
7. A subsequent mortgage creditor, who became such after the division of the property, and only as to one undivided part, is entitled to be subrogated to the rights of the first mortgage creditor, as they existed at the time of the subrogation. *Ib.*
8. If a party interested in the result of the suit, claiming under the subsequent mortgage, files a bill in the nature of a bill of interpleader, he cannot be allowed a solicitor's fee, to be paid from the fund dedicated to the payment of the mortgage. *Ib.*

Arkansas.

See CRIMINAL LAW, 17.

Colorado.

See VENDOR'S LIEN, 2.

New Mexico.

See STATUTE, A, 1, 2;

USURY.

New York.

See TIDAL LAND, 1, 2.

Wisconsin.

See LIMITATION, STATUTES OF.

MANDAMUS.

1. Mandamus is the proper remedy when a mandate of this court has been disregarded. *In re City Bank*, 246.
2. In this case the court cannot hold that its mandate was disregarded by the decree rendered under it by the Circuit Court. *Ib.*

3. When a mandate of this court has been misconstrued or disregarded by a Circuit Court, the proper remedy now is by mandamus; but in this case the Circuit Court was at liberty to consider the application for an allowance, and its action in that regard was open to review in the Circuit Court of Appeals. *Mason v. Pewabic Mining Co.*, 361.

See JURISDICTION, A, 1.

MANDATE.

See MANDAMUS.

MORTGAGE.

See LOCAL LAW, 3-8.

OKLAHOMA.

See CRIMINAL LAW, 1, 2.

PATENT FOR INVENTION.

1. When a question between contending parties, as to priority of invention, is decided in the Patent Office, the decision there made must be accepted as controlling, upon that question of fact, in any subsequent suit between the same parties, unless the contrary is established by testimony which, in character and amount, carries thorough conviction. *Morgan v. Daniels*, 120.
2. The claims covered by letters patent No. 56,793, issued July 31, 1866, to Henry Pearce for "a new and useful machine for crushing and pulverizing quartz-rock, stone, and any description of ores," were not infringed by the machine made by the defendants, and were, in some respects, anticipated by the invention patented to Jonathan F. Ostrander by letters patent No. 4478, dated April 25, 1846; by the invention patented to George H. Wood by letters patent No. 28,031, dated April 24, 1860; and by the invention patented to James W. Rutter by reissued letters patent No. 3633, dated September 7, 1869. *Gates Iron Works v. Fraser*, 332.
3. The invention patented to Charles M. Brown by letters patent No. 201,646, dated March 26, 1878, for "a new and useful improvement in ore-crushers," was in its general features a reproduction of the machine patented to James W. Rutter by reissued letters patent No. 3633, dated September 7, 1869; and, in view of the prior patents to Rutter and Tripp, must receive a narrow construction, which frees the defendants from the charge of infringing them. *Ib.*
4. The invention patented to George Raymond and Albert Raymond by letters patent No. 237,320, dated February 1, 1881, for "improvements in grinding mills," was for a combination which included several features not found in the machines made by the defendants. *Ib.*
5. The function of the safety pin in letters patent No. 110,397, issued to

- John H. Rusk, December 20, 1870, and antedated December 9, 1870, is practically the same as that of the pin in the combination patented to George and Albert Raymond. *Ib.*
6. The claim in letters patent No. 243,343, issued June 21, 1881, to Philetus W. Gates for the segmental cast-bearing for the ball of the socket joint, having a form which gives it a bearing contact upon the ball, was anticipated by machines constructed by Charles M. Brown and in public use more than two years before Gates applied for his patent. *Ib.*
 7. The claim in letters patent No. 243,545, issued June 28, 1881, to Philetus W. Gates for a novel application of a loose collar around the eccentrically gyrating shaft to prevent dirt from getting into the bearing, was anticipated in the Brown machine, as changed in 1878, by a circular washer or collar upon the top of the sleeve that surrounded the breaking head, which fitted around the shaft. *Ib.*
 8. The invention patented to Philetus W. Gates by letters patent No. 246,608, dated September 6, 1881, viz., a device for a depression or groove in the outer bearing surface of the bearing-box, and applying within this depression a removable portion of carbon-bronze metal, so as to correct the wear of the machine at that place, is void for want of patentable invention. *Ib.*
 9. The alleged invention in letters patent No. 250,656, issued December 13, 1881, to Philetus W. Gates, is for a combination of old features, viz., a shaft, a bearing for the shaft, a hard metal plate in the lower end of the shaft, an adjustable sliding step block, an oil step box, and a hard metal plate at the end of the shaft, all of which, except the metal plate, were present in the Brown machine as made and sold more than two years before Gates applied for the patent; and the metal plate was old and in use for the same purpose as in Gates's machine long before his application. *Ib.*
 10. The use of safety pins for saving machinery from the strain of a sudden jar did not involve patentable invention. *Ib.*
 11. A verbal assignment of an interest in letters patent is held to have no force or effect against a subsequent assignee claiming under a formal written transfer, and having no knowledge of the previous verbal transfer. *Ib.*

PRACTICE.

1. A ruling by the court below, correct when applied to this case, is sustained without regard to its correctness as a general proposition. *Spalding v. Castro*, 38.
2. Depositions placed in the custody of the clerk as taken in this case may be opened and filed, as well as map exhibits, and an order is made for the taking of further testimony, and for the receiving of such documents and maps as the city of Oakland may offer touching its title to the lands in dispute, and for the opening and filing of the same when returned to the clerk. *California v. Southern Pacific Company*, 239.

3. This court expresses no opinion as to the validity or invalidity of the writ of error in this case. *Miller v. Texas*, 535.

PRINCIPAL AND AGENT.

See EJECTMENT, 1, 2.

PROMISSORY NOTE.

In an action by the payee of a negotiable promissory note against the maker, evidence is admissible to show a parol agreement between the parties, made at the time of the making of the note, that it should not become operative as a note until the maker could examine the property for which it was to be given, and determine whether he would purchase it. *Burke v. Dulaney*, 228.

PUBLIC LAND.

See TIDAL LAND, 3, 4, 5, 6.

PUBLIC POLICY.

See STATUTE, A.

RAILROAD.

See DAMAGES, 1, 2;

JURISDICTION, A, 3;

TAX AND TAXATION, 4, 5, 6.

RECEIVER.

1. A receiver of a railroad, appointed with authority "to make all contracts that may be necessary in carrying on the business of said railroad, subject to the supervision of this court," has no authority to make a lease for a term of general offices, without authority from the court, and to bind his successors and the property therefor for the term, without direction from or sanction by the court. *Chicago Deposit Vault Co. v. McNulta*, 554.
2. The facts that the receiver's accounts showed, monthly, the payment of the rent under such a lease, and that that rent was reasonable, and that the accounts as rendered were passed by the master and reported to and approved by the court, do not amount to a sanction of the lease for the term. *Ib.*

REMOVAL OF CAUSES.

Under the act of March 3, 1887, c. 373, corrected by the act of August 13, 1888, c. 866, (as under earlier acts,) one of several defendants, being a citizen of the same State as a plaintiff, cannot remove a cause from a state court into the Circuit Court of the United States upon the ground of prejudice and local influence between himself and the other defendants. *Hanrick v. Hanrick*, 192.

See COSTS.

STATUTE.

A. GENERALLY.

1. The council of the legislature of the Territory of New Mexico which took part in the passage of the act approved March 14, 1884, authorizing the building of a penitentiary, and of the act approved March 29, 1884, to provide for the building of a capitol, having been recognized by the governor of the Territory, and by the secretary of the Territory, and by the House of Representatives of the Territory, and it further appearing that the objections to its organization now made were brought to the attention of Congress, and that that body took no action on the subject, and the courts of the Territory having adjudged that those statutes were duly enacted; *Held*, That considerations of public policy forbid this mode of attacking the validity of officers *de facto*, whatever defects there may have been in the legality of their appointment or election. *Lyons v. Woods*, 649.
2. The allegations of this bill make no such case for interposition as would justify the courts in going behind the enrolled bills, as deposited with the secretary of the Territory, and declaring them invalid because some of the members of the council were seated without certificates of election. *Ib.*

B. STATUTES OF THE UNITED STATES.

<i>See</i> ADMIRALTY, 5, 7;	EVIDENCE, 3;
CONSTITUTIONAL LAW, 18;	JURISDICTION, A, 1, 2; B;
CRIMINAL LAW, 1, 7, 9, 11, 16;	REMOVAL OF CAUSES;
CUSTOMS DUTIES, 2, 3, 7, 9;	TIDAL LAND, 3.

C. STATUTES OF STATES AND TERRITORIES.

<i>Arkansas.</i>	<i>See</i> CRIMINAL LAW, 17.
<i>Dakota Territory.</i>	<i>See</i> TAX AND TAXATION, 3.
<i>Louisiana.</i>	<i>See</i> CONSTITUTIONAL LAW, 14.
<i>Maryland.</i>	<i>See</i> CONSTITUTIONAL LAW, 1, 2, 3, 5.
<i>Nebraska.</i>	<i>See</i> LOCAL LAW, 1.
<i>New Mexico.</i>	<i>See</i> STATUTE, A, 1, 2;
	USURY, 1.
<i>New York.</i>	<i>See</i> CONSTITUTIONAL LAW, 20, 21;
	TIDAL LAND, 1.
<i>North Dakota.</i>	<i>See</i> CONSTITUTIONAL LAW, 10.
<i>Pennsylvania.</i>	<i>See</i> CONSTITUTIONAL LAW, 6, 19.
<i>Tennessee.</i>	<i>See</i> JURISDICTION, A, 3;
	TAX AND TAXATION, 4, 5, 6.
<i>South Carolina.</i>	<i>See</i> CONSTITUTIONAL LAW, 22.
<i>Virginia.</i>	<i>See</i> CONSTITUTIONAL LAW, 1, 2, 3, 5.
<i>Wisconsin.</i>	<i>See</i> LIMITATION, STATUTES OF.

SUNDAY.

Sunday is a non-judicial day which does not interrupt the continuity of a term of court. *United States v. Shields*, 88.

TAX AND TAXATION.

1. No one can be permitted to go into a court of equity to enjoin the collection of a tax, until he has shown himself entitled to the aid of the court by paying so much of the tax assessed against him as it can be plainly seen he ought to pay. *Northern Pacific Railroad Co. v. Clark*, 252.
2. *State Railroad Tax Cases*, 92 U. S. 575, and *National Bank v. Kimball*, 103 U. S. 732, affirmed and followed on this point. *Ib.*
3. The Northern Pacific Railroad Company, having accepted the provisions of the act of Dakota of March 7, 1889, c. 107, became liable thereby to pay the designated percentage of its gross earnings in lieu of taxes for the year 1889, which liability was not discharged by the subsequent repeal of the gross earnings act of 1889; and, having failed to make that payment, or to make a tender of what was due under one or the other modes of taxation, it is not entitled to relief in equity to enjoin the enforcement of a tax upon its property as upon the property of individuals in the counties in which the property is situated. *Ib.*
4. In 1848 the legislature of Tennessee had, under the constitution of the State of 1834, then in force, power to grant to the Mobile and Ohio Railroad Company the exemption from taxation which was granted to it by the eleventh section of the act of January 28, 1848, incorporating it in Tennessee, in the following terms: "That the capital stock of said company shall be forever exempt from taxation, and the road, with all its fixtures and appurtenances, including workshops, warehouses, and vehicles of transportation, shall be exempt from taxation for the period of twenty-five years from the completion of the road, and no tax shall ever be laid on said road or its fixtures which will reduce the dividends below eight per cent." *Mobile & Ohio Railroad Co. v. Tennessee*, 486.
5. Under the provisions of that section the capital stock of the company is forever exempt from taxation during the existence of the corporation; the road, fixtures, etc., were exempt for twenty-five years after the completion of the road, which term has now expired; and now they can be taxed only when the net earnings of the road are more than sufficient to pay to the stockholders, on the present basis of its capital, a dividend of eight per cent a year. *Ib.*
6. In sustaining the validity of the exemption, the court must not be understood as holding that the railroad company has the right, in its discretion, to issue hereafter additional capital stock, or to increase its bonded indebtedness, even for legitimate purposes, and have the same taken into consideration upon the question of its liability

for taxation under the eight per cent dividend clause of its charter.
Ib.

See CONSTITUTIONAL LAW, 19;
 JURISDICTION, A, 3.

TIDAL LAND.

1. The grant to the town of Huntington, made by the Governor General under the Duke of York, on the 30th of November, 1666, and confirmed by Governor General Dongan in 1688, and again confirmed, with a change in description, by Governor General Fletcher, in 1694, operated to convey to the grantee the lands under tide water in Huntington Bay, as defined by a line drawn from Lloyd's Neck to Eaton's Neck; and any title to such lands under water which came to the State of New York, was ceded to the trustees of the town by the State, by the act of its legislature of May 10, 1888, c. 279. *Lowndes v. Huntington*, 1.
2. In reaching this conclusion this court follows the settled rules of decision in the courts of New York relating to the form of the action, the title to the submerged lands, and the special defences set up in this case. *Ib.*
3. Scrip or certificates for public land, issued under the act of April 5, 1872, c. 89, 17 Stat. 649, "for the relief of Thomas B. Valentine," cannot be located on tide land in the State of Washington, covered and uncovered by the flow and ebb of the tide. *Mann v. Tacoma Land Co.*, 273.
4. The general legislation of Congress in respect to public lands does not extend to tide lands. *Ib.*
5. This court cannot take judicial notice of the nature and extent of tide lands or mud flats. *Baer v. Moran Bros. Co.*, 287.
6. Land alternately covered and uncovered by the tide is strictly within the description of tide lands, and is covered by the settled rule in respect to such lands. *Ib.*
7. *Mann v. Tacoma Land Company*, ante, 273, followed. *Ib.*

TRADE-MARK.

See JURISDICTION, A, 1.

TRESPASS DE BONIS ASPORTATIS.

1. A count in trespass *de bonis asportatis*, for the taking and detaining of personal property, can only be supported on the theory that plaintiff was either its owner, or entitled of right to its possession at the time of the trespass complained of. *Wilson v. Haley Live Stock Co.*, 39.
2. In an act of trespass *de bonis asportatis* the plaintiff cannot recover as upon a count for money had and received, at least without an amendment of the complaint. *Ib.*

USURY.

1. The statutes of New Mexico, Compiled Laws 1884, §§ 1736-1738, do not permit the receiving of usurious interest by way of, or under the guise of discount, commission, agency, or other subterfuge. *McBroom v. Scottish Mortgage and Land Investment Co.*, 318.
2. Those statutes make void a contract of loan providing for usurious interest only as to the interest in excess of what the statute allows. *Ib.*
3. The limitation of three years, under the statutes of New Mexico, within which the borrower may sue for double the amount of usurious interest collected and received from him does not commence to run, and consequently the right of action therefor does not accrue, until the lender has collected or received more than the original debt with interest. *Ib.*

VENDOR'S LIEN.

1. The courts of the United States enforce vendor's and grantor's liens, if in harmony with the jurisprudence of the State in which the action is brought. *Slide & Spur Gold Mines v. Seymour*, 509.
2. It being conceded that a vendor's lien is recognized in Colorado, such a lien will be recognized and enforced in a Federal court in that District. *Ib.*
3. On the contracts in this case, set forth in the opinion of the court, and the circumstances attending the making of them as therein detailed, this court holds that the plaintiffs below retained a vendor's lien upon their mining property in Colorado which they conveyed to the defendants below, and affirm the decree of the court below to that effect. *Ib.*

WARRANT.

See CRIMINAL LAW, 16, 17.

WILL.

1. Under a will, by which the testator devises and bequeathes to his wife "all my estate, real and personal, of which I may die seized, the same to be and remain hers, with full power, right and authority to dispose of the same as to her shall seem most meet and proper, so long as she shall remain my widow, upon the express condition, however, that if she should marry again, then it is my will that all of the estate herein bequeathed, or whatever may remain, should go to my surviving children, share and share alike," the widow has power during widowhood to convey to third persons an estate in fee simple in his lands. *Roberts v. Lewis*, 367.
2. *Giles v. Little*, 104 U. S. 291, overruled; and *Little v. Giles*, 25 Nebraska, 313, followed. *Ib.*

WRIT OF ERROR.

See JURISDICTION, A, 4.